

Keith Eugene Hunsucker

(b)(6)

Evening Phone: (b)(6)

Day Phone: (b)(6)

Email: keith.hunsucker@usdoj.gov

Availability: **Job Type:** Permanent
Work Schedule: Full-Time

Work Experience: U.S. Department of Justice - Executive Office for 08/2010 - Present

Immigration Review **Salary:** 174,500.00 USD
Carl B. Stokes U.S Courthouse **Per Year**
801 West Superior Ave., Suite 13-100 **Hours per week:** 40
Cleveland, OH 44113-1829 United States **Series:** 0905 **Pay Plan:**
IJ Grade: 00

Immigration Judge (This is a federal job)

Supervisor: (b)(6)

Okay to contact this Supervisor: Yes

As an Immigration Judge I preside over formal immigration hearings in the United States Immigration Court. I was assigned to the Immigration Court in Port Isabel, Texas from August, 2010 until September, 2017 and am currently stationed in Cleveland. As an Immigration Judge I rule on various motions, including motions to reopen, motions to suppress and other issues regarding the admissibility of evidence. I preside over initial hearings, including providing rights advisals. I also make determinations of removability and inadmissibility and preside over formal hearings where individuals request relief from removal. These types of relief include: asylum, withholding of removal, cancellation of removal for lawful and non-lawful permanent residents, and adjustment of status. I render both written and oral decisions. These decisions are subject to appeal to the U.S. Board of Immigration Appeals, and then to the U.S. Courts of Appeal and the Supreme Court of the United States.

I also perform liaison functions, including serving as liaison judge and liaison to pro-bono legal services providers. As liaison judge I meet with senior government officials to provide information about court functions. These senior officials have included: the Secretary of the Department of Homeland Security, the Deputy Attorney General of the United States, the Director of Immigration and Customs Enforcement, and the Chief of the U.S. Border Patrol.

Additionally, I provide training and mentoring to Immigration Judges and law clerks. I have designed and provided formal training to new judges, and have

been the official year-long mentor to four judges.

Note: This position is subject to a special statutory pay plan. Immigration Judge salaries are subject to a cap equal to Executive Level III.

U.S. Department of Justice - Executive Office for 01/2018 - 09/2018

Immigration Review

5107 Leesburg Pike

Falls Church, VA 22041 United States

Hours per week: 40

Series: 0905 **Pay Plan:**

IJ Grade: 00

This a time-limited appointment or temporary promotion

Temporary Board Member (This is a federal job)

Supervisor: (b)(6)

Okay to contact this Supervisor: Yes

While serving as an Immigration Judge, I was appointed by the Attorney General to serve as a temporary member of the U.S. Board of Immigration Appeals. The primary function of the Board of Immigration Appeals is to review the decisions of the Immigration Courts. In this position I functioned as an administrative appellate judge, reviewing the decisions of Immigration Judges and issuing decisions subject to appeal to the U.S. Courts of Appeal.

Federal Law Enforcement Training Center

Chapel Crossing Road

Brunswick, GA 31520 United States

06/2000 - 08/2010

Hours per week: 40

Series: 0905 **Pay Plan:**

GS Grade: 13

Senior Instructor (This is a federal job)

Supervisor: (b)(6)

Okay to contact this Supervisor: Yes

As a Senior Instructor in the Legal Division of the Federal Law Enforcement Training Center (FLETC) I provided training to most federal law enforcement agencies, including: ATF, ICE, U.S. Secret Service, Marshals Service, and many others.

I taught all legal courses in the Criminal Investigator Training Program and Uniform Police Training Program. I also wrote or revised several Lesson Plans, substantial portions of the student text, and hundreds of test questions. When needed, I served as an instructor for the Physical Techniques Division and the Enforcement Operations Division. I also served a detail assignment as a Program Specialist in the FLETC Office of State and Local Training. Further,

I worked extensively with the Training Innovation Division in researching the effects of stress on law enforcement officer performance.

Additionally, I taught advanced courses throughout the United States, with selected examples highlighted below.

I was contact person in Legal Division for all accreditation issues for both the CITP and UPTP programs. I attended FLETA Board meetings as an expert on Legal Division training when CITP and UPTP were accredited. I represented the Division at SASS (automated scheduling system) meetings and designed business rules for this system. I also served on the Lesson Plan Working Group and helped rewrite the FLETC Lesson Plan Directive.

From 11/06 to 3/07 I was detailed as a Program Specialist for the Criminal Investigator Training Program (CITP). In this position I was responsible for coordinating all aspects of the CITP program, including handling scheduling issues, student health issues, testing issues and any emergency issues. I delivered FLETC orientation courses, handled challenges to test questions, and arranged graduation ceremonies. I also met with representatives from FLETC Partner Organizations to resolve various student issues, including test scores, behavior and emergency issues.

As a Senior Instructor I wrote three articles which have been published in the FLETC Journal. I also wrote an article which was published in Police Chief magazine. Additionally, I received 6 "outstanding" performance evaluations.

I taught thousands of experienced federal agents, officers and attorneys. These courses include legal updates and specific courses noted below:

Federal Agents and Officers as Witnesses

Audience: Criminal AUSAs

Location: The National Advocacy Center of the U.S. Dept. of Justice

Interviewing Techniques

Audience: Federal Attorneys

Location: The National Advocacy Center of the U.S. Dept. of Justice

Legal Issues of Undercover Operations

Audience: Federal Special Agents

Location: The Federal Law Enforcement Training Center

Continuing Legal Education Training Program (various legal subjects)

Audience: Various federal, state, local, campus and tribal police

Location: throughout the U.S.

DHS / Office of General Counsel

245 Murray Lane, SW

Washington, DC

Washington DC, DC 20528 United States

06/2009 - 09/2009

Hours per week: 40

Series: 0905 **Pay Plan:**

GS Grade: 13

This a time-limited
appointment or temporary
promotion

Attorney Advisor (This is a federal job)

Supervisor: (b)(6)

Okay to contact this Supervisor: Yes

While employed by the Federal Law Enforcement Training Center, I spent the summer of 2009 serving a detail assignment to the DHS Office of General Counsel. I served as an attorney in the Operations and Enforcement Law Division, and reported to (b)(6) the DHS Associate General Counsel for Operations and Enforcement Law.

My primary responsibility was to provide legal advice to Assistant Secretary Alan Bersin, who was also DHS Special Representative for Border Affairs (and was the pending Presidential nominee to be Commissioner of U.S. Customs and Border Protection).

I provided legal advice on many different border enforcement issues, including: enforcement options to deter illegal immigration, increasing the use of expedited removal under section 235 of the Immigration and Nationality Act, expanding the capacity of Immigration Courts on the border, denying visas to associates of drug traffickers, and stopping ultra-light aircraft from being used in smuggling.

I also led DHS efforts to revise Emergency Support Function 13 (ESF 13), the Public Safety and Security Annex to the National Response Framework. In this role I served as the DHS representative at numerous meetings with the Department of Justice, and prepared a draft revision of ESF 13.

U.S. Department of Justice - Training Experience **01/1995 - 06/2000**

Atlanta, GA United States

Hours per week: 0

Series: 0905 **Pay Plan:**

GS Grade: 14

Assistant District Counsel (This is a federal job)

Supervisor: (b)(6)

Okay to contact this Supervisor: Yes

As a Department of Justice attorney in the Atlanta District Office of the INS, I planned, administered and evaluated various law enforcement training programs. I provided training to new and experienced federal law enforcement officers. I developed the Prosecutions and Courtroom Testimony Course for the Immigration Officer Academy at the Federal Law Enforcement Training Center (FLETC). This included assessing the needs of the students, developing an outline of training, and placing this outline in a form which could be used by myself and others. I personally taught this course many times as a detailed instructor, and revised the training as appropriate after assessing the effectiveness of the training. Further, I trained other experienced Department of Justice attorneys to deliver this training, including providing them with training outlines and personal instruction on how to deliver this training. I also developed a training program for experienced federal officers on the effect of the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). This included reviewing the law and interviewing officers in senior management positions to assess the training needs, preparing training materials, and delivering the training. This training included defining key provisions of the law and then monitoring the officers work to make sure they appropriately put this training into action.

U.S. Department Of Justice - INS

Atlanta, GA United States

11/1992 - 06/2000

Hours per week: 40

Series: 0905 **Pay Plan:**

GS Grade: 14

Assistant District Counsel (This is a federal job)

Supervisor: (b)(6)

Okay to contact this Supervisor: Yes

As an attorney with the U.S. Department of Justice, I represented the government in many different legal proceedings. I regularly appeared in the U.S. Immigration Court as lead counsel for the U.S. Immigration and Naturalization Service (INS). I routinely dealt with violations of immigration law, including fraud and human trafficking. I also dealt with many other crimes, including tax fraud and espionage. I also represented the INS in several hundred appeals. Additionally, I gave guidance and direction to senior government managers and private stakeholders regarding the law and agency positions.

I was lead counsel on high profile cases and cases involving national security. I personally responded to approximately two dozen Congressional Inquiries, and briefed Congressional staff members on major cases. I directly briefed a Member of Congress on one particularly high profile case.

I routinely represented the INS before government and private agencies. For example, I advised the FBI and the District Attorney's Office on the effect of new immigration laws and regulations. I also represented the position of the INS to government and private stakeholders on an almost daily basis.

As needed, I served as Acting District Counsel, handling supervisory duties for a four attorney office. This included handling emergency scheduling matters, signing time and attendance reports, and reporting to regional and national headquarters offices. I also directed senior management on compliance with EEO, MSPB and the Freedom of Information Act. Additionally, I advised senior managers on employee discipline and termination issues.

I also served with other senior management and legal personnel to develop and issue agency policy positions. I often wrote trial and appellate briefs in support of these positions, which were publicly filed documents representing the position of my agency.

As a trial lawyer, I regularly built coalitions and facilitated resolution of conflicting interests. I represented the United States in several thousand contested cases, where the opposition was, by definition, at odds with the position of the government. I worked as a mediator between private attorneys and the INS to make sure violations of law were appropriately charged. I also met with representatives from private legal organizations to explain INS policies and mediate disputes these private organizations had administratively with dealing with the INS.

I also developed new operating methods to increase agency effectiveness and facilitate conflict management. For example, I developed a novel method of litigating marriage fraud cases which allowed the government to quickly and accurately determine if the marriage had been entered into solely for immigration purposes. Conversely, it also quickly demonstrated whether a marriage was legitimate. I taught this method to other attorneys within the Department of Justice, who also adopted this method.

U.S. Department Of Justice - INS

Harlingen, TX United States

11/1989 - 11/1992

Salary: 48,000.00 USD

Per Year

Hours per week: 40

Series: 0905 **Pay Plan:**

GS Grade: 13

Attorney (This is a federal job)

Supervisor: (b)(6)

Okay to contact this Supervisor: Yes

I performed Immigration Court duties similar to those in Atlanta. The primary forms of relief sought from deportation were asylum, suspension of deportation, and waivers of deportation pursuant to section 212(c) of the Immigration and Nationality Act. Many of these hearings involved detained aliens, and aliens convicted of serious crimes such as drug trafficking. For some time during my work in Harlingen the caseload was extremely high volume due to the highly publicized large number of individuals illegally entering from Central America. On some mornings, I represented the United States in over 90 deportation cases. I also handled other legal duties as assigned, such as reviewing the contract for the INS leased office building to determine if the landlord was in violation of the lease conditions.

Additionally, I served as Legal Counsel to the Port Isabel Service Processing Center as outlined below.

Legal Counsel - Port Isabel Service Processing Center

I served as chief legal counsel to the largest immigration detention center in the United States. Duties included monitoring compliance with federal laws and injunctions and advising deportation and detention officers on various legal issues.

Crowded conditions and the detention of serious criminals led to several disturbances at the facility while I was Legal Counsel. This necessitated frequent entrance into the facility by teams of federal officers to remove troublemakers and search for drugs and weapons. As Legal Counsel, I met with senior INS personnel prior to these searches to advise on the legality of the searches and also to instruct on the permissible level of force which could be used. Due to the many legal issues which could quickly arise during the course of such activity, I also accompanied the teams upon their entry in the facility to provide immediate advice on searches and the use of appropriate physical force. I also served as an INS liaison to private immigration practitioners working at Port Isabel and routinely met with these private immigration practitioners to discuss detention conditions, bond amounts, and the INS position on specific pending cases.

Royce Security Corporation

NA,

05/1987 - 09/1987

Hours per week: 0

Supervisory Security Officer

For four summer seasons (May through September 1982, 1983, 1984, 1987) I

served as a security officer at Blossom Music Center, a large outdoor concert facility. I eventually became the number two uniformed security officer, often supervising in excess of 60 uniformed security officers at large (in excess of 20,000 patrons) rock concerts. I provided both first-line supervision, and also supervised 5 - 6 first line supervisors, each of whom were responsible for supervising between 5 - 20 officers. My supervisory duties included scheduling shifts for all employees (in excess of one hundred), issuing uniforms and equipment, overseeing time sign in - sign out, and responding to emergencies.

In addition, I provided training on law enforcement techniques including the use of non-deadly force, non-lethal weapons, self-defense, detention procedures and proper radio communication. Because of the nature of this work, myself and officers under my supervision routinely used physical force to restrain and transport criminal suspects. Individuals subjected to this force included people who were intoxicated, violent, and/or under the influence of illegal drugs. I obtained law enforcement knowledge for this job through both formal and on the job training. This position required me to use managerial skills under stressful conditions every night.

Education: **The University of Akron** Akron, OH United States
Doctorate 05/1987

Relevant Coursework, Licenses and Certifications:

Licensed to practice law before the Ohio and District of Columbia Bar.
Admitted to practice law before numerous federal courts, including the Supreme Court of the United States.

Class Rank: 17 out of 139

Selected to Omicron Delta Kappa, Honorary Leadership Fraternity.

Member of the University of Akron National Moot Court Team, Chief Justice of Bracton's Inn, the University of Akron School of Law advocacy society.

The University of Akron Akron, OH United States
Bachelor's Degree 01/1984

Relevant Coursework, Licenses and Certifications:
Top 9% of undergraduate class.

Note that undergraduate totals from the University of Akron include transfer hours from Ohio University and the University of Arkansas.

Job Related Training:	<p>Advanced New Immigration Judge Training Program, September, 2011</p> <p>New Immigration Judge Training Program, September, 2010</p> <p>FLETC Future Leaders Program, February, 2008 - March, 2009</p> <p>FLETC New Supervisor Training Program, October, 2008</p> <p>Decision Making and Problem Solving (from USDA Graduate School), November, 2008</p> <p>"Dealing with Difficult People" (one day training program), November, 2008</p> <p>Use of Force Instructor Training Program April, 2004</p> <p>Law Enforcement Instructor In-Service Training Program July, 2005</p> <p>Law Enforcement Instructor Training Program July, 2000</p> <p>Practical (Law Enforcement) Exercise Evaluator Training Program July, 2000</p>
Affiliations:	<p>Ohio State Bar Association - Member</p> <p>Supreme Court of Ohio - Bar Member</p> <p>The Supreme Court of the United States - Bar Member</p>
Professional Publications:	<p>"Criminal Without Conviction - Prosecuting the Unconvicted Arriving Alien Under Section 212(a)(2)(A) of the Immigration and Nationality Act," 2 Quarterly Review, ed. 2, January 2001</p> <p>"Right to Be - Right to See, Practical Fourth Amendment Application for Law Enforcement Officers," The Police Chief, September, 2003</p> <p>"Mental Preparation for Testifying," FLETC Journal, Spring, 2008</p> <p>"Lawsuits - The Overblown Worry," FLETC Journal, Spring, 2007</p> <p>Co-author, "Is the Military Non-unanimous Finding of Guilty Still an Issue?", The Army Lawyer, October, 1986.</p>
Additional Information:	<p>U.S. Department of Justice - INS, Attorney of the Year, 1994</p> <p>Outstanding Performance Rating as FLETC Senior Instructor, 2002, 2006, 2007, 2008, 2009, 2010</p> <p>Outstanding Performance Evaluation as a Department of Justice Attorney, 1994, 1997, 1998, 1999</p> <p>Omicron Delta Kappa</p> <p>The National Order of Barristers</p>

FLETC Future Leaders Program:

From February, 2008 to March, 2009 I was a member of the FLETC Future Leaders Program. This was an intense, one-year program, designed to develop a few competitively selected FLETC employees for leadership positions within FLETC. As part of this training, I led a four person team working to increase the effectiveness of communication between FLETC and the Partner Organizations (POs). This team was sponsored by the FLETC Training Directorate (ADT).

The team met with numerous POs and FLETC managers to discuss improving the method by which POs are notified of training changes. We developed and proposed a modification to the FLETC Lesson Plan Directive (94-01), and worked to increase the usefulness of the PO website as a method for communicating with the POs. I personally drafted a Position Description for a FLETC Partner Organization Liaison position, and presented this recommendation to the FLETC Training Directorate. I also met with the FLETC Assistant Director for Training on a regular basis to discuss training issues.

Notable litigation:

I have represented the United States as lead counsel on some particularly notable litigation, including:

Matter of Yen Men Kao

Following six years of surveillance, the FBI contacted me to see if I could obtain a deportation order against Mr. Kao for his espionage activities against the United States. For classified reasons relating to national security, the FBI did not want Mr. Kao criminally prosecuted, but did want Mr. Kao apprehended, held without bond, and deported for espionage.

Prior to Mr. Kao's apprehension, I met with the FBI Special Agent in Charge, and provided advice regarding the apprehension and prosecution of Mr. Kao. I reviewed years worth of classified surveillance materials. I served as lead counsel for the government throughout this case. Following contested court hearings, I obtained an order that Mr. Kao be held without bond, and then obtained a court order that Mr. Kao be deported for his espionage activities. This case was the subject of much media attention, including being the subject of a feature article in the Reader's Digest, December, 1994.

United States v. Williams Produce, Inc.

Williams Produce was charged with hundreds of violations of section 274A of the Immigration and Nationality Act relating to penalties for employers who violate immigration laws. As lead counsel for the government, I obtained the largest monetary penalty ever awarded in a contested case under section 274A up to that time. This litigation lasted several years. It required me to make numerous decisions about resource allocation, and the value of case settlement versus protracted litigation.

Atlanta 1996 Olympic Games

During the Atlanta Olympics, a temporary Immigration Court was established at the Atlanta Hartsfield International Airport. I handled numerous cases in this Court during the Olympic Games, and provided front-line advice to the INS Port Director regarding legal issues which arose during the influx of visitors to Atlanta during the Olympic Games.

Matter of A-A-

A-A- was an individual who was ordered deported in absentia. On appeal, he argued that an exception to the statutory deadline for filing a motion to reopen should be created due to the actions of his attorney in the case. As lead counsel for the INS, I opposed this appeal. The Board of Immigration Appeals ruled in favor of the INS, and published this decision as a binding legal precedent.

QUALITY RANKING FACTORS FOR BIA

Keith E. Hunsucker

1. Ability to demonstrate the appropriate temperament to serve as a Board Member.

From January, 2018 through September, 2018, I served as a Temporary Board Member. In this position I adjudicated appeals from decisions of Immigration Judges from around the country. I also adjudicated disciplinary matters, appeals from USCIS and cases on remand to the Board from the Circuit Courts of Appeal. I was part of a three-member panel which heard oral argument regarding whether a conviction for attempted sexual battery in violation of Texas law constitutes a crime of child abuse under the Immigration and Nationality Act.

I regularly interacted with other members of the Board to discuss issues and seek consensus in resolving disputed matters. I participated in *en banc* discussions of legal issues, and corresponded with Board staff attorneys regarding legal issues and the draft decisions which they submitted.

Additionally, I have been an Immigration Judge since 2010. As such, I preside over a courtroom on a daily basis. I have presided over dockets involving detained individuals, non-detained individuals and juveniles. Some of these cases involved extremely emotional respondents and witnesses. I have also presided over cases where the individuals appearing before me had mental competency issues and cases where the respondent was a potential danger to himself and others. Virtually all of my time in the courtroom is recorded to create a record for any potential appeal.

I provide training to new Immigration Judges on how to conduct master calendar hearings, and that training includes a segment on courtroom control. I have also served as the official mentor to four new Immigration Judges. Additionally, I have repeatedly served as the liaison and pro bono liaison judge. In these roles, I address issues on behalf of the court to public and private stakeholders. These stakeholders have included the Secretary of the Department of Homeland Security, the Director of Immigration and Customs Enforcement (ICE), the Chapter Chair of the American Immigration Lawyers Association (AILA), and the Chief of the U.S. Border Patrol.

2. Knowledge of immigration laws and procedures.

In addition to serving as an Immigration Judge since 2010, I served a detail as a temporary member of the Board of Immigration Appeals from January, 2018 to September, 2018. As a temporary Board Member, I reviewed appeals of Immigration Judge decisions from around the country. I also provide formal training to new Immigration Judges on a variety of issues, including case management, conducting a master calendar, and evidence.

Prior to becoming an Immigration Judge I was a Senior Instructor at the Federal Law Enforcement Training Center (FLETC) for ten years. In this position I primarily taught basic and advanced criminal law subjects to federal agents. I also taught federal attorneys, and have taught repeatedly at the National Advocacy Center of the U.S. Department of Justice.

In 2009, I was detailed to the DHS Office of General Counsel to provide legal advice on border and immigration enforcement issues. One of my primary responsibilities was to provide legal advice to Assistant Secretary Alan Bersin, who was the DHS Special Representative for Border Affairs (and was the pending Presidential nominee to be Commissioner of U.S. Customs and Border Protection).

I also served as an Assistant District Counsel with the Immigration and Naturalization Service (INS) for 11 years. I was lead counsel in thousands of cases, including cases involving national security and employer sanctions. I was lead counsel in Matter of Yen Men Kao, an espionage case which received international attention.

3. Proven ability to manage cases, preferably in a high volume context.

I have been an Immigration Judge since 2010. As an Immigration Judge I spend the majority of my working day in court. Most of that time I have been assigned to a detained docket. During periods of high volume, I would conclude in excess of 50 matters in a morning. I provide formal training and mentorship to new Immigration Judges on how to handle high volume dockets, and have prepared formal training materials including detailed scripts which are currently used by Immigration Judges to conduct large volume dockets. I have also presided over competency hearings, hearings by video-telephone, and hearings consisting solely of juveniles.

I also served for 11 years as an Assistant District Counsel with the Immigration and Naturalization Service (INS). During that time I appeared in Immigration Courts across the nation, and appeared before approximately half of the Immigration Judges in the United States. I have appeared in temporary court facilities, including trailers set up for use in border detention facilities. I have also represented the government at hearings conducted in prisons and ports of entry. In 1996, I represented the government in a temporary Immigration Court established in the Atlanta-Hartsfield International Airport for the Summer Olympic Games.

From January, 2018 through September, 2018, I served as a Temporary Board Member. In this position I regularly adjudicated a large number of appeals. Importantly, I also learned the methods used by the Board to revise draft decisions, route records of proceedings within the Board, and communicate with other Board Members to reach consensus on issues.

4. Experience handling complex legal issues.

I have been an Immigration Judge since 2010. In this position I must make determinations regarding complex legal matters on a daily basis. These include issues regarding bond eligibility for individuals with criminal convictions, and the statutory eligibility of individuals for relief from removal. I also adjudicate constitutional issues, such as motions to suppress evidence due to egregious violations of civil rights.

From January, 2018 to September, 2018, I served as a temporary member of the Board of Immigration Appeals. As a Board Member, I addressed some of the most complex immigration law issues facing the Executive Office for Immigration Review. I adjudicated appeals from Immigration Courts around the nation, and addressed novel issues such as the definitional parameters of a “particular social group” and the proper determination of what constitutes a “crime involving moral turpitude” or “drug trafficking crime.”

As an attorney with the INS, I also handled very complex legal issues. These included issues involving national security, citizenship, defining whether or not criminal convictions subjected an alien to removability, and many others. As lead counsel in United States v. Williams Produce, Inc., I obtained the largest monetary penalty ever awarded in a contested case under section 274A of the INA up to that time. I was also lead counsel in Matter of Yen Men Kao, an espionage case which was the subject of a feature article in the “Reader’s Digest”, December, 1994. My experience in handling complex legal issues was the primary reason I was selected INS Attorney of the Year in 1994.

5. Experience conducting administrative hearings, including proven ability or potential to serve as an effective decision-maker.

I have conducted thousands of administrative hearings since becoming an Immigration Judge in 2010. As an Immigration Judge, conducting administrative hearings is my primary duty. I currently train new Immigration Judges on how to conduct hearings, and have drafted detailed training guides on how to conduct immigration hearings. The purpose of this training is to teach new judges how to make timely, efficient and legally accurate decisions. The guides I wrote on conducting immigration hearings are used both in training and by judges in the field.

I served as the assigned one year mentor to four different Immigration Judges. I am also regularly consulted by Immigration Judges for advice on how to handle complex matters in immigration court hearings.

6. Knowledge of judicial practices and procedures.

I have been an Immigration Judge since 2010. I have designed training materials for new Immigration Judges, and have provided formal training to new Immigration Judges on a variety of topics including case management, conducting master calendar hearings, and evidence. From January, 2018, to September, 2018, I served as a temporary member of the Board of Immigration Appeals. In this capacity I reviewed the practices and procedures of Immigration Judges around the country when those practices and procedures formed the bases for appeal. I am regularly consulted by Immigration Judges for advice on how to handle complex issues.

As a Senior Instructor at the Federal Law Enforcement Training Center, I taught courses on court procedure and the Federal Rules of Evidence for approximately ten years. During the 11 years I was an Assistant District Counsel with INS, I appeared in front of dozens of Immigration Judges in many different states. This gave me a rare opportunity to study what judicial practices truly work best under the unique rules of the Immigration Court.

7. Excellent analytical, decision-making, and writing abilities.

As an Immigration Judge since 2010, I must make difficult decisions involving complex legal issues on an almost daily basis. Almost all of my work as an Immigration Judge has been in detained courts where my decisions have immediate impact on the parties before me. My decisions are subject to appeal to the Board of Immigration Appeals, and then to higher federal courts.

As an Immigration Judge, I was appointed by the Attorney General to be a temporary member of the Board of Immigration Appeals from January, 2018 through September, 2018. In this role, I reviewed appeals from the decisions of Immigration Judges across the country. I believe my selection to be a Temporary Board Member demonstrated that the Executive Office for Immigration Review thought highly of my analytical and decision-making abilities.

I have written extensive training material for use by Immigration Judges, and I have taught repeatedly at the National Advocacy Center of the U.S. Department of Justice. I have published articles on a variety of legal topics, including immigration and law enforcement issues. Additionally, I wrote significant portions of the Legal Division textbook used to train federal agents at the Federal Law Enforcement Training Center.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LOS FRESNOS, TEXAS

APPLICATION: Motion to Reopen

FOR THE RESPONDENT:
REDACTED, Atty. at Law

FOR THE DHS:
REDACTED, ACC

DECISION OF THE IMMIGRATION JUDGE

PROCEDURAL HISTORY

Respondent was admitted to the United States as a lawful permanent resident in 1973. On December 9, 2002, Respondent was convicted of Possession of a Controlled Substance Less than One Gram. Respondent was sentenced to two years in jail, which was suspended in lieu of 5 years of community supervision.

Respondent was thereafter placed in removal proceedings and charged as being subject to removal for having been convicted of an aggravated felony. Respondent conceded he was subject to removal as charged on March 27, 2003. Respondent was ordered removed by the Immigration Judge. Respondent did not appeal this decision, and was removed to Mexico shortly after being ordered removed on March 27, 2003.

In 2006, the Supreme Court held in *Lopez v. Gonzalez*, 594 U.S. 47 (2006) that the crime for which Respondent was convicted did not constitute an aggravated felony under the Immigration and Nationality Act (Act).

In July, 2014, Respondent filed a Motion to Reopen. On August 7, 2014, that Motion to Reopen was denied as untimely.

The Respondent filed a timely appeal of that denial. On November 6, 2014, the Board of Immigration Appeals affirmed the decision of the Immigration Judge denying Respondent's Motion to Reopen.

On July 28, 2016, the Fifth Circuit Court of Appeals reversed this decision by the Board. The Fifth Circuit found that the Board improperly ignored Respondent's argument for equitable tolling and remanded the case to the Board to consider whether equitable tolling was appropriate under the facts of this case. On November 21, 2016, the Board remanded the case to the Immigration Court to determine whether or not equitable tolling is appropriate in this case.

FINDINGS OF FACT

On April 3, 2017, a hearing was held in this matter. While the evidentiary record speaks for itself, the relevant factual claims by Respondent are fairly straightforward.

Respondent testified that he was 13 years old when he entered the United States in 1973. Respondent testified that he lived in the United States from this time until he was removed. Respondent testified that he completed school in the United States, including his 2 year degree in x-ray technology which he received in 1983. Respondent testified that all of his schooling in the United States was in English. Respondent testified that he was more comfortable testifying in Spanish than English. However, Respondent testified that he is fluent in English, and that such fluency was necessary to complete his schooling in the United States.

Respondent claims that he spoke to some attorneys prior to his removal hearing in 2003. Respondent testified that these attorneys told him that his case was a "lost cause." Respondent was ordered removed in March, 2003, and did not appeal. Respondent was removed shortly after the order of removal was entered, and has lived in Mexico since that time.

Respondent testified that he first started making inquiry about his case shortly after he was removed until 2006. Respondent testified that he concluded from his inquiry that nothing could be done to change the outcome of his case. Respondent testified that he thereafter did not research his case from 2006 until 2014.

Respondent testified that while his family is economically "fine," it was difficult for them to afford the cost of legal representation. Respondent testified that since 2003, he has not had funds sufficient to constantly consult

with attorneys about the law. Respondent further testified that he is not trained in the law and that he did not have ready access to the internet in Mexico.

After being removed from the United States, Respondent lived in the Mexican city of Matamoros. Matamoros is located directly across the United States border from the Texas city of Brownsville. Respondent has many family members living in Brownsville, Texas.

Respondent testified that in either April or May of 2014 he heard for the first time that it might be possible to “fix” his case. Respondent testified that he was at a gathering with some friends when he heard a new law might benefit Respondent and help him return legally to the United States. Respondent testified that until this time he had never heard from anyone that there was any way he could legally return to the United States.

Respondent testified that upon hearing that a new law might benefit him, he promptly contacted his family members and asked them to speak with an attorney about his case. Respondent testified that his family members contacted Attorney **REDACTED** who filed a Motion to Reopen on Respondent’s behalf in July, 2014. Respondent testified that he thereafter followed his case through his family who lives in Brownsville, Texas.

The testimonial and documentary evidence presented by the Respondent was plausible and consistent. The Court finds that Respondent’s claims as set forth above are credible.

In sum, Respondent was removed in 2003 for having been convicted of an aggravated felony. In 2006, the Supreme Court issued a decision holding that the criminal offense for which Respondent was removed did not constitute an aggravated felony as defined by the Immigration and Nationality Act. However, Respondent did not learn about that Supreme Court decision until 2014. Upon hearing that the law might have changed in a way beneficial to his case, Respondent promptly hired an attorney and filed a Motion to Reopen.

CONCLUSIONS OF LAW

Both the Fifth Circuit and the Board directed this Court to develop a relevant factual record. This has been done, as outlined above. Therefore, if necessary, the Board and higher courts have a complete evidentiary record for review.

However, as Respondent’s Motion to Reopen is back before this Court, this Court must now provide a new ruling on Respondent’s motion.

As found by the Fifth Circuit in its ruling on this case, Respondent filed a statutory Motion to Reopen under INA section 240(c)(7). **REDACTED**, --- F.3d --- (5th Cir. 2016). By statute, Respondent was required to file any Motion to Reopen within 90 days of the final administrative order entered in his case. The final administrative order in Respondent’s case was entered on March 27, 2003. Respondent filed his Motion to Reopen over 11 years later, in July, 2014.

The Fifth Circuit further stated that: “a litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. The first element requires the litigant to establish that he pursued his rights with ‘reasonable diligence,’ not ‘maximum feasible diligence.’ The second element requires the litigant to establish that an ‘extraordinary circumstance’ ‘beyond his control’ prevented him from complying with the applicable deadline.” *Id.* (citations omitted).

In dicta, the Fifth Circuit further stated:

In a case such as this one, the BIA should give due consideration to the reality that many departed

aliens are poor, uneducated, unskilled in the English language, and effectively unable to follow developments in the American legal system -- much less read and digest complicated legal decisions. The BIA should also take care not to apply the equitable tolling statute ‘too harshly’ because denying an alien the opportunity to seek cancellation of removal -- when it is evident that the basis for his removal is now invalid--‘is a particularly serious matter.’ As the Supreme Court recently reminded, the core purpose of equitable tolling is to escape the ‘evils of archaic rigidity’ and to ‘to accord all the relief necessary to correct . . . particular injustices.’

Id.

The Fifth Circuit then concluded: “For now, we leave it to the BIA to determine whether this case presents an injustice that warrants correction.” Id. Since the Board remanded this case to the Court, it now falls upon this Court to first decide whether Respondent’s motion should be granted.

The Fifth Circuit appears to be directing that equitable tolling not be applied in an overly restrictive manner. However, as a matter of law, it makes no difference whether or not many departed aliens are poor, uneducated and unskilled in English and American law. The relevant facts are those unique to the Respondent.

In this regard, Respondent is fluent in English. Respondent completed two years of college in the United States and obtained a degree in x-ray technology. Respondent lives in the Mexican city of Matamoros, which borders the Texas city of Brownsville. Respondent has many relatives who live in the United States. These relatives live on the border near Respondent and communicated frequently with the Respondent after he was removed to Mexico.

Throughout this case, Respondent’s arguments have primarily focused on his belief that his case was a “lost cause” after he was removed in 2003 and that he never heard of any law which might help his case until April or May of 2014. Such claims might be used to argue that despite the passage of years Respondent has been pursuing his case diligently. However, Respondent’s diligence is not the key issue in this matter. Rather, the large and obvious hurdle Respondent must overcome is to demonstrate that an extraordinary circumstance prevented him from timely filing his Motion to Reopen.

The doctrine of equitable tolling is applied restrictively, and is entertained only in cases presenting “rare and exceptional circumstances where it is necessary to preserve a plaintiff’s claims when strict application of the statute of limitations would be inequitable.” In re Wilson, 442 F.3d 872 (5th Cir. 2006) (citations omitted). The filing deadline for Respondent was 90 days. Respondent missed this deadline by over a decade.

Respondent argues that a Supreme Court ruling in 2006 would have impacted his case had his hearing been held after 2006. Assuming that Respondent had a legitimate basis to seek reopening of his case in 2006, he still failed to file such motion until over 7 years later. The Court of Appeals directed that the Board not apply equitable tolling standards “too harshly.” It is one thing for a court to show leniency where “archaic rigidity” to a deadline would create injustice. However, extending a 90 day filing deadline by many years does not prevent injustice. Rather, such act would ignore the purpose of filing deadlines and statutes of limitations and essentially render them moot.

Both the public and the BIA share a particularly strong policy interest in the finality of immigration proceedings. See INS v. Abudu, 485 U.S. 94, 107 (1988). The Fifth Circuit has stated that equitable tolling may be considered when determining if a respondent timely filed his motion to reopen. However, the Fifth Circuit gave no indication in its ruling that it intended to set aside well established precedent recognizing the importance of finality of proceedings.

Respondent has presented sympathetic factors in his case. Such factors are present in many cases. However, Respondent’s Motion to Reopen was still filed many years after the deadline. The Court must

conclude that Respondent has failed to demonstrate that he is entitled to equitable tolling of the filing deadline. Accordingly, Respondent's Motion to Reopen must be denied.

ORDER

ORDER: IT IS HEREBY ORDERED that Respondent's Motion to Reopen is **DENIED**.

Dated this _____ day of April, 2017.

Keith E. Hunsucker
Immigration Judge



4297991
48
U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

July 18, 2019

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *per for JAR*
8.119

FROM: James R. McHenry III *See for JRM*
Director

SUBJECT: Candidate for an Appellate Immigration Judge Position

PURPOSE: To refer to the Attorney General for his consideration the paperwork to appoint a current immigration judge (IJ) that is a candidate to an open appellate immigration judge (AIJ), to a position located at the Cleveland Immigration Court (IC).

TIMETABLE: At the Attorney General's earliest convenience.

DISCUSSION: The Board of Immigration Appeals (BIA) is the Executive Office for Immigration Review's (EOIR) appellate component, having nationwide jurisdiction to hear appeals from decisions rendered by IJs and certain decisions by district directors of the Department of Homeland Security (DHS). By regulation the BIA has 21 AIJs. It currently has 15 AIJs and six vacancies.

In accordance with the AIJ (also known as board member) hiring procedures established on March 8, 2019, a three-member Finalist Panel (Panel) recently convened to evaluate the candidates recommended by EOIR to fill a current Board Member vacancy.

EOIR recommended multiple candidates to the Panel for the vacancy. The Panel reviewed the applicants' written materials and summaries of their interviews conducted by EOIR. The Panel then conducted its own interviews of the candidates for the vacancy. Finally, the Panel discussed the merits of the candidates and agreed to recommend the below listed individual for a vacancy.

The EOIR Director then consulted with the Office of the Deputy Attorney General and the Office of the Attorney General about each recommended candidate. Following these procedures and per the authority delegated by the Attorney General, the EOIR Director determined that IJ Keith E. Hunsucker should be appointed for an AIJ position to be located at the Cleveland IC. Notwithstanding the delegation of authority to the EOIR Director, the Attorney General retains discretion over the final selection and appointment of candidates.¹

On April 13, 2010, then Attorney General Eric H. Holder, Jr., tentatively selected Keith E. Hunsucker to serve as an IJ. On July 20, 2010, he was appointed as an IJ, not to exceed 18 months, pending a background investigation. He entered on duty under a temporary appointment order on August 29, 2010, and on April 18, 2011, then Attorney General Holder permanently appointed Mr. Hunsucker. (See workflows 1795492, 1878970, and 2339743.) During his time as an IJ, Mr. Hunsucker has performed in an exemplary manner. He has presided over hearings in both detained and non-detained settings in a number of different circuits. Judge Hunsucker has liaised with pro bono legal service providers, and while he was an IJ in Port Isabel, Texas, he also liaised with senior government officials during tours of the border. More recently, he successfully served as a temporary AIJ in 2018. (See workflows 3954631 and 4049260). The candidate has a completed and favorably adjudicated background investigation, and there is no derogatory information that would preclude him from being appointed as the seventeenth AIJ on the BIA, filling a position that has been vacant since June 2018. A copy of the candidate's application file is immediately available upon your request.

Judge Hunsucker presents as an excellent candidate for an AIJ position. He is currently an IJ with nearly 30 years of experience in immigration and related areas of law. Judge Hunsucker has a broad base of immigration knowledge and served previously as a temporary AIJ. He also worked at the DHS as an attorney for the Federal Law

¹ Previously, if a current IJ was recommended to become a Board Member, per Departmental guidance it was EOIR practice to put forth first a temporary appointment order establishing a new probationary period, followed by a permanent order upon successful completion of the probationary period. While this remains the practice for non-IJ candidates, for sitting IJs, the Office of Legal Counsel has advised, and the Office of the Deputy Attorney General has concurred, that an incumbent IJ converting to an AIJ position requires the same or similar skills and, therefore, should not be placed on a new not-to-exceeds appointment. Therefore, this candidate, having completed his probationary period as an IJ, will be placed on a permanent appointment.

Enforcement Training Center (FLETC). Judge Hunsucker further worked as an attorney for the former Immigration and Naturalization Service (INS) within the Department of Justice. His application materials, including his interviews, denote a candidate well-qualified to serve as an AIJ. One member of the Panel described his interview as "amazing," and another ranked him among the best of the candidates interviewed overall.

From 2000 to 2010, Judge Hunsucker was a senior instructor at FLETC in Brunswick, Georgia. As a senior instructor, he had significant responsibilities, which included providing legal training to most federal law enforcement agencies, including United States Immigration and Customs Enforcement, the United States Secret Service, and the United States Marshals Service, and teaching all legal courses in the Criminal Investigator Training Program and the Uniform Police Training Program. Judge Hunsucker also served a detail in DHS Office of General Counsel in Washington, District of Columbia, in 2009, where he served as an attorney in the Operations and Enforcement Law Division and provided legal advice to DHS Special Representative for Border Affairs.

From 1989 to 2000, Judge Hunsucker was an assistant district counsel for INS, in Harlingen, Texas, from 1989 to 1992, and in Atlanta, Georgia, from 1992 to 2000. In this capacity, he served as legal counsel to an INS Processing Center, represented INS in proceedings before IJs and on appeal to the BIA, liaised with other federal agencies, advised management on labor and employment law issues, and administered training programs. Judge Hunsucker also served as lead counsel on cases of high importance to INS and developed new methods to increase agency effectiveness in addressing particular immigration issues. As needed he also served as acting district counsel supervising other attorneys in his office.

Judge Hunsucker holds a Bachelor of Arts degree from the University of Akron, Akron, Ohio, and a Juris Doctor from the University of Akron School of Law, Akron, Ohio.

Judge Hunsucker's current and prior federal service was vetted and no negative information that would preclude his appointment as an AIJ was reported.

Memorandum for the Attorney General
Subject: Candidate for an AIJ Position

Page 4

Judge Hunsucker's selection for this AIJ position was made in accordance with the hiring procedures approved by the Attorney General.

An Attorney General Order, appointing Keith E. Hunsucker as an AIJ, is attached hereto for signature.

RECOMMENDATION: That the Attorney General sign the attached order.

APPROVE: MPB

Date: August 14, 2019

Concurring components:

OLC 5E7-30-19

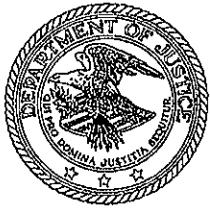
DISAPPROVE: _____

Nonconcurring components:

None

OTHER: _____

Attachment



Office of the Attorney General
Washington, D. C. 20530

ORDER NO. 4507-2019

APPOINTING KEITH E. HUNSUCKER AS AN APPELLATE IMMIGRATION JUDGE

By the authority vested in me as the Attorney General by 8 U.S.C. § 1103(g)(1), I hereby appoint Keith E. Hunsucker as an Appellate Immigration Judge.

This order shall be effective on the first day of the pay period in which the oath of office is taken.

8/14/2019
Date

W.P.Barr
William P. Barr
Attorney General